

Robert F. Tyson, Jr. Esq. (Bar No. 147177)
Kristi Blackwell, Esq. (Bar No. 253967)
Terra M. Davenport, Esq. (Bar No. 292677)
TYSON & MENDES, LLP
5661 La Jolla Boulevard
La Jolla, CA 92037
Telephone: (858) 459-4400

Atorneys for Defendant
LOWE'S HOME CENTERS, LLC (erroneously sued herein as
"LOWE'S HOME IMPROVEMENT CENTERS, LLC")

Marita Nogueiras, Esq. (Bar No. 213616)
Law Offices of Marita Nogueiras
108002 Downey Avenue, Suite B
Downey, CA 90241

**Attorney for Plaintiff
USHA NATH**

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

USHA NATH,

Plaintiff,

V.

**LOWE'S HOME IMPROVEMENT
CENTERS, LLC, and DOES 1 to 50,**

Defendants.

Case No. 17-cv-4134-AFM

STIPULATED PROTECTIVE ORDER

Hon. Alexander F. MacKinnon

Courtroom: 840

Plaintiff Usha Nash and Defendant Lowe's Home Centers, LLC (erroneously sued as "Lowe's Home Improvement Centers, LLC), through their undersigned counsel, hereby stipulate and agree as follows:

1 1. A. PURPOSES AND LIMITATIONS

2 Discovery in this action is likely to involve production of confidential,
3 proprietary or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may be
5 warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter
6 the following Stipulated Protective Order. The parties acknowledge that this Order
7 does not confer blanket protections on all disclosures or responses to discovery and
8 that the protection it affords from public disclosure and use extends only to the
9 limited information or items that are entitled to confidential treatment under the
10 applicable legal principles.

11 B. GOOD CAUSE STATEMENT

12 This action is likely to involve trade secrets, customer and pricing lists and
13 other valuable research, development, commercial, financial, technical and/or
14 proprietary information for which special protection from public disclosure and from
15 use for any purpose other than prosecution of this action is warranted. Such
16 confidential and proprietary materials and information consist of, among other
17 things, confidential business or financial information, information regarding
18 confidential business practices, or other confidential research, development, or
19 commercial information (including information implicating privacy rights of third
20 parties), information otherwise generally unavailable to the public, or which may be
21 privileged or otherwise protected from disclosure under state or federal statutes,
22 court rules, case decisions, or common law. Accordingly, to expedite the flow of
23 information, to facilitate the prompt resolution of disputes over confidentiality of
24 discovery materials, to adequately protect information the parties are entitled to keep
25 confidential, to ensure that the parties are permitted reasonable necessary uses of
26 such material in preparation for and in the conduct of trial, to address their handling
27 at the end of the litigation, and serve the ends of justice, a protective order for such
28 information is justified in this matter. It is the intent of the parties that information

1 will not be designated as confidential for tactical reasons and that nothing be so
2 designated without a good faith belief that it has been maintained in a confidential,
3 non-public manner, and there is good cause why it should not be part of the public
4 record of this case.

5 **C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER SEAL**

6 The parties further acknowledge, as set forth in Section 12.3, below, that this
7 Stipulated Protective Order does not entitle them to file confidential information
8 under seal; Local Civil Rule 79-5 sets forth the procedures that must be followed
9 and the standards that will be applied when a party seeks permission from the court
10 to file material under seal. There is a strong presumption that the public has a right
11 of access to judicial proceedings and records in civil cases. In connection with non-
12 dispositive motions, good cause must be shown to support a filing under seal. See
13 *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006),
14 *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-*
15 *Welbon v. Sony Electrics, Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even
16 stipulated protective orders require good cause showing), and a specific showing of
17 good cause or compelling reasons with proper evidentiary support and legal
18 justification, must be made with respect to Protected Material that a party seeks to
19 file under seal. The parties' mere designation of Disclosure or Discovery Material as
20 CONFIDENTIAL does not— without the submission of competent evidence by
21 declaration, establishing that the material sought to be filed under seal qualifies as
22 confidential, privileged, or otherwise protectable—constitute good cause.

23 Further, if a party requests sealing related to a dispositive motion or trial, then
24 compelling reasons, not only good cause, for the sealing must be shown, and the
25 relief sought shall be narrowly tailored to serve the specific interest to be protected.
26 See *Pintos v. Pacific Creditors Ass'n.*, 605 F.3d 665, 677-79 (9th Cir. 2010). For
27 each item or type of information, document, or thing sought to be filed or introduced
28 under seal in connection with a dispositive motion or trial, the party seeking

protection must articulate compelling reasons, supported by specific facts and legal justification, for the requested sealing order. Again, competent evidence supporting the application to file documents under seal must be provided by declaration.

Any document that is not confidential, privileged, or otherwise protectable in its entirety will not be filed under seal if the confidential portions can be redacted. If documents can be redacted, then a redacted version for public viewing, omitting only the confidential, privileged, or otherwise protectable portions of the document, shall be filed. Any application that seeks to file documents under seal in their entirety should include an explanation of why redaction is not feasible.

2. DEFINITIONS

2.1 Action: this pending federal lawsuit.

2.2 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their support staff).

2.5 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

2.6 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

1 2.7 Expert: a person with specialized knowledge or experience in a matter
2 pertinent to the litigation who has been retained by a Party or its counsel to serve as
3 an expert witness or as a consultant in this Action.

4 2.8 House Counsel: attorneys who are employees of a party to this Action.
5 House Counsel does not include Outside Counsel of Record or any other outside
6 counsel.

7 2.9 Non-Party: any natural person, partnership, corporation, association or
8 other legal entity not named as a Party to this action.

9 2.10 Outside Counsel of Record: attorneys who are not employees of a party
10 to this Action but are retained to represent or advise a party to this Action and have
11 appeared in this Action on behalf of that party or are affiliated with a law firm that
12 has appeared on behalf of that party, and includes support staff.

13 2.11 Party: any party to this Action, including all of its officers, directors,
14 employees, consultants, retained experts, and Outside Counsel of Record (and their
15 support staffs).

16 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
17 Discovery Material in this Action.

18 2.13 Professional Vendors: persons or entities that provide litigation support
19 services (e.g., photocopying, videotaping, translating, preparing exhibits or
20 demonstrations, and organizing, storing, or retrieving data in any form or medium)
21 and their employees and subcontractors.

22 2.14 Protected Material: any Disclosure or Discovery Material that is
23 designated as “CONFIDENTIAL.”

24 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
25 from a Producing Party.

26 ///

27 ///

28 ///

1 3. SCOPE

2 The protections conferred by this Stipulation and Order cover not only
3 Protected Material (as defined above), but also (1) any information copied or
4 extracted from Protected Material; (2) all copies, excerpts, summaries, or
5 compilations of Protected Material; and (3) any testimony, conversations, or
6 presentations by Parties or their Counsel that might reveal Protected Material. Any
7 use of Protected Material at trial shall be governed by the orders of the trial judge.
8 This Order does not govern the use of Protected Material at trial.

9

10 4. DURATION

11 Once a case proceeds to trial, information that was designated as
12 CONFIDENTIAL or maintained pursuant to this protective order used or introduced
13 as an exhibit at trial becomes public and will be presumptively available to all
14 members of the public, including the press, unless compelling reasons supported by
15 specific factual findings to proceed otherwise are made to the trial judge in advance
16 of the trial. See *Kamakana*, 447 F.3d at 1180-81 (distinguishing “good cause”
17 showing for sealing documents produced in discovery from “compelling reasons”
18 standard when merits-related documents are part of court record). Accordingly, the
19 terms of this protective order do not extend beyond the commencement of the trial.

20

21 5. DESIGNATING PROTECTED MATERIAL

22 5.1 Exercise of Restraint and Care in Designating Material for Protection.

23 Each Party or Non-Party that designates information or items for protection under
24 this Order must take care to limit any such designation to specific material that
25 qualifies under the appropriate standards. The Designating Party must designate for
26 protection only those parts of material, documents, items or oral or written
27 communications that qualify so that other portions of the material, documents, items

1 or communications for which protection is not warranted are not swept unjustifiably
2 within the ambit of this Order.

3 Mass, indiscriminate or routinized designations are prohibited. Designations
4 that are shown to be clearly unjustified or that have been made for an improper
5 purpose (e.g., to unnecessarily encumber the case development process or to impose
6 unnecessary expenses and burdens on other parties) may expose the Designating
7 Party to sanctions. If it comes to a Designating Party's attention that information or
8 items that it designated for protection do not qualify for protection, that Designating
9 Party must promptly notify all other Parties that it is withdrawing the inapplicable
10 designation.

11 5.2 Manner and Timing of Designations. Except as otherwise provided in this
12 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
13 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
14 under this Order must be clearly so designated before the material is disclosed or
15 produced.

16 Designation in conformity with this Order requires:

17 (a) for information in documentary form (e.g., paper or electronic documents,
18 but excluding transcripts of depositions or other pretrial or trial proceedings), that
19 the Producing Party affix at a minimum, the legend "CONFIDENTIAL" (hereinafter
20 "CONFIDENTIAL legend"), to each page that contains protected material. If only a
21 portion of the material on a page qualifies for protection, the Producing Party also
22 must clearly identify the protected portion(s) (e.g., by making appropriate markings
23 in the margins).

24 A Party or Non-Party that makes original documents available for inspection
25 need not designate them for protection until after the inspecting Party has indicated
26 which documents it would like copied and produced. During the inspection and
27 before the designation, all of the material made available for inspection shall be
28 deemed "CONFIDENTIAL." After the inspecting Party has identified the

1 documents it wants copied and produced, the Producing Party must determine which
2 documents, or portions thereof, qualify for protection under this Order. Then, before
3 producing the specified documents, the Producing Party must affix the
4 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a
5 portion of the material on a page qualifies for protection, the Producing Party also
6 must clearly identify the protected portion(s) (e.g., by making appropriate markings
7 in the margins).

8 (b) for testimony given in depositions that the Designating Party identifies the
9 Disclosure or Discovery Material on the record, before the close of the deposition all
10 protected testimony.

11 (c) for information produced in some form other than documentary and for
12 any other tangible items, that the Producing Party affix in a prominent place on the
13 exterior of the container or containers in which the information is stored the legend
14 “CONFIDENTIAL.” If only a portion or portions of the information warrants
15 protection, the Producing Party, to the extent practicable, shall identify the protected
16 portion(s).

17 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
18 failure to designate qualified information or items does not, standing alone, waive
19 the Designating Party’s right to secure protection under this Order for such material.
20 Upon timely correction of a designation, the Receiving Party must make reasonable
21 efforts to assure that the material is treated in accordance with the provisions of this
22 Order.

23
24 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

25 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
26 designation of confidentiality at any time that is consistent with the Court’s
27 Scheduling Order.

28 ///

1 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
2 resolution process under Local Rule 37-1 et seq.

3 6.3 Joint Stipulation. Any challenge submitted to the Court shall be via a joint
4 stipulation pursuant to Local Rule 37-2.

5 6.4 The burden of persuasion in any such challenge proceeding shall be on the
6 Designating Party. Frivolous challenges, and those made for an improper purpose
7 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
8 expose the Challenging Party to sanctions. Unless the Designating Party has waived
9 or withdrawn the confidentiality designation, all parties shall continue to afford the
10 material in question the level of protection to which it is entitled under the
11 Producing Party's designation until the Court rules on the challenge.

12

13 7. ACCESS TO AND USE OF PROTECTED MATERIAL

14 7.1 Basic Principles. A Receiving Party may use Protected Material that is
15 disclosed or produced by another Party or by a Non-Party in connection with this
16 Action only for prosecuting, defending or attempting to settle this Action. Such
17 Protected Material may be disclosed only to the categories of persons and under the
18 conditions described in this Order. When the Action has been terminated, a
19 Receiving Party must comply with the provisions of section 13 below (FINAL
20 DISPOSITION). Protected Material must be stored and maintained by a Receiving
21 Party at a location and in a secure manner that ensures that access is limited to the
22 persons authorized under this Order.

23 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
24 ordered by the court or permitted in writing by the Designating Party, a Receiving
25 Party may disclose any information or item designated “CONFIDENTIAL” only to:

26 ///

27 ///

28

- 1 (a) the Receiving Party's Outside Counsel of Record in this Action, as well as
2 employees of said Outside Counsel of Record to whom it is reasonably necessary to
3 disclose the information for this Action;
- 4 (b) the officers, directors, and employees (including House Counsel) of the
5 Receiving Party to whom disclosure is reasonably necessary for this Action;
- 6 (c) Experts (as defined in this Order) of the Receiving Party to whom
7 disclosure is reasonably necessary for this Action and who have signed the
8 "Acknowledgment and Agreement to Be Bound" (Exhibit A);
- 9 (d) the court and its personnel;
- 10 (e) court reporters and their staff;
- 11 (f) professional jury or trial consultants, mock jurors, and Professional
12 Vendors to whom disclosure is reasonably necessary for this Action and who have
13 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);
- 14 (g) the author or recipient of a document containing the information or a
15 custodian or other person who otherwise possessed or knew the information;
- 16 (h) during their depositions, witnesses, and attorneys for witnesses, in the
17 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
18 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will
19 not be permitted to keep any confidential information unless they sign the
20 "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise
21 agreed by the Designating Party or ordered by the court. Pages of transcribed
22 deposition testimony or exhibits to depositions that reveal Protected Material may be
23 separately bound by the court reporter and may not be disclosed to anyone except as
24 permitted under this Stipulated Protective Order; and
- 25 (i) any mediator or settlement officer, and their supporting personnel,
26 mutually agreed upon by any of the parties engaged in settlement discussions.

27 ///

28 ///

1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
2 IN OTHER LITIGATION

3 If a Party is served with a subpoena or a court order issued in other litigation
4 that compels disclosure of any information or items designated in this Action as
5 “CONFIDENTIAL,” that Party must:

6 (a) promptly notify in writing the Designating Party. Such notification shall
7 include a copy of the subpoena or court order;

8 (b) promptly notify in writing the party who caused the subpoena or order to
9 issue in the other litigation that some or all of the material covered by the subpoena
10 or order is subject to this Protective Order. Such notification shall include a copy of
11 this Stipulated Protective Order; and

12 (c) cooperate with respect to all reasonable procedures sought to be pursued
13 by the Designating Party whose Protected Material may be affected.

14 If the Designating Party timely seeks a protective order, the Party served with
15 the subpoena or court order shall not produce any information designated in this
16 action as “CONFIDENTIAL” before a determination by the court from which the
17 subpoena or order issued, unless the Party has obtained the Designating Party’s
18 permission. The Designating Party shall bear the burden and expense of seeking
19 protection in that court of its confidential material and nothing in these provisions
20 should be construed as authorizing or encouraging a Receiving Party in this Action
21 to disobey a lawful directive from another court.

22
23 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
24 PRODUCED IN THIS LITIGATION

25 (a) The terms of this Order are applicable to information produced by a Non-
26 Party in this Action and designated as “CONFIDENTIAL.” Such information
27 produced by Non-Parties in connection with this litigation is protected by the
28

1 remedies and relief provided by this Order. Nothing in these provisions should be
2 construed as prohibiting a Non-Party from seeking additional protections.

3 (b) In the event that a Party is required, by a valid discovery request, to
4 produce a Non-Party's confidential information in its possession, and the Party is
5 subject to an agreement with the Non-Party not to produce the Non-Party's
6 confidential information, then the Party shall:

7 (1) promptly notify in writing the Requesting Party and the Non-Party
8 that some or all of the information requested is subject to a confidentiality agreement
9 with a Non-Party;

10 (2) promptly provide the Non-Party with a copy of the Stipulated
11 Protective Order in this Action, the relevant discovery request(s), and a reasonably
12 specific description of the information requested; and

13 (3) make the information requested available for inspection by the Non-
14 Party, if requested.

15 (c) If the Non-Party fails to seek a protective order from this court within 14
16 days of receiving the notice and accompanying information, the Receiving Party
17 may produce the Non-Party's confidential information responsive to the discovery
18 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
19 not produce any information in its possession or control that is subject to the
20 confidentiality agreement with the Non-Party before a determination by the court.
21 Absent a court order to the contrary, the Non-Party shall bear the burden and
22 expense of seeking protection in this court of its Protected Material.

23
24 10. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

25 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
26 Protected Material to any person or in any circumstance not authorized under this
27 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
28 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts

1 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
2 persons to whom unauthorized disclosures were made of all the terms of this Order,
3 and (d) request such person or persons to execute the “Acknowledgment and
4 Agreement to Be Bound” that is attached hereto as Exhibit A.

5

6 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
7 PROTECTED MATERIAL

8 When a Producing Party gives notice to Receiving Parties that certain
9 inadvertently produced material is subject to a claim of privilege or other protection,
10 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
11 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
12 may be established in an e-discovery order that provides for production without prior
13 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
14 parties reach an agreement on the effect of disclosure of a communication or
15 information covered by the attorney-client privilege or work product protection, the
16 parties may incorporate their agreement in the stipulated protective order submitted
17 to the court.

18

19 12. MISCELLANEOUS

20 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
21 person to seek its modification by the Court in the future.

22 12.2 Right to Assert Other Objections. By stipulating to the entry of this
23 Protective Order, no Party waives any right it otherwise would have to object to
24 disclosing or producing any information or item on any ground not addressed in this
25 Stipulated Protective Order. Similarly, no Party waives any right to object on any
26 ground to use in evidence of any of the material covered by this Protective Order.

27 12.3 Filing Protected Material. A Party that seeks to file under seal any
28 Protected Material must comply with Local Civil Rule 79-5. Protected Material may

1 only be filed under seal pursuant to a court order authorizing the sealing of the
2 specific Protected Material at issue. If a Party's request to file Protected Material
3 under seal is denied by the court, then the Receiving Party may file the information
4 in the public record unless otherwise instructed by the court.

5

6 13. FINAL DISPOSITION

7 After the final disposition of this Action, as defined in paragraph 4, within 60
8 days of a written request by the Designating Party, each Receiving Party must return
9 all Protected Material to the Producing Party or destroy such material. As used in
10 this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
11 summaries, and any other format reproducing or capturing any of the Protected
12 Material. Whether the Protected Material is returned or destroyed, the Receiving
13 Party must submit a written certification to the Producing Party (and, if not the same
14 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
15 (by category, where appropriate) all the Protected Material that was returned or
16 destroyed and (2) affirms that the Receiving Party has not retained any copies,
17 abstracts, compilations, summaries or any other format reproducing or capturing any
18 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
19 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
20 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
21 reports, attorney work product, and consultant and expert work product, even if such
22 materials contain Protected Material. Any such archival copies that contain or
23 constitute Protected Material remain subject to this Protective Order as set forth in
24 Section 4 (DURATION).

25 ///

26 ///

27 ///

28 ///

1 14. **VIOLATION**

2 Any violation of this Order may be punished by appropriate measures
3 including, without limitation, contempt proceedings and/or monetary sanctions.

4

5 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

6

7 DATED: October 3, 2017

8

9 */s/ Marita Nogueiras*

10 Attorney for Plaintiff

11

12

13 DATED: October 3, 2017

14

15 */s/ Terra Davenport*

16 Attorney for Defendant

17

18

19 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

20 DATED: 10/4/2017

21 

22

23 ALEXANDER F. MacKINNON

24 United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on _____ [date] in the case of *Usha Nath v. Lowe's Home Improvement Centers, LLC et al.*, Case No. 17-cv-4134-AFM. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order. I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: